



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA 2017-40
Site: 263 Washington Street
Date of Decision: October 4, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 18, 2017

ZBA DECISION

Applicant Name: 261-263 Washington Somerville, LLC
Applicant Address: P.O. Box 610312, Newton Hills, MA 02461
Property Owner Name: Michael E. & Constance O'Connor
Property Owner Address: 36 Buckingham Road, Milton, MA 02186
Agent Name: Richard G. DiGirolamo, Esq.

Legal Notice: Applicant, 261-263 Washington Somerville, LLC, and Owner, Michael E. & Constance O'Connor, seek Special Permits under §4.4.1 and §8.5 of the SZO to increase the FAR by more than 25%; Special Permits under §7.11 of the SZO to remove the funeral home use and convert to 4 residential units; Special Permits under Article 9* of the SZO for parking relief.

Zoning District/Ward: NB zone/Ward 2
Zoning Approval Sought: §4.4.1
Date of Application: April 6, 2017
Date(s) of Public Hearing: 6/7, 6/21, 7/12, 8/2, 8/16, 9/6, 9/27, 10/4
Date of Decision: October 4, 2017
Vote: 5-0

Appeal #ZBA 2017-40 was opened before the Zoning Board of Appeals at the Somerville High School Auditorium on June 7, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The Applicant's proposal for this property is multi-fold. At a high level, the funeral home use will be removed from the commercial space and a 3-story addition will be added to the rear of the property. The entirety of the existing Mansard structure will be renovated and it, together with the additional square footage created by the rear addition, will be used to accommodate four residential units. Staff's description of key elements of this project proposal appear immediately after the Staff note below.

A Note from Planning Staff:

Staff would like to emphasize that this is a **RARE** occasion where Staff is supportive of the roofline of a rear addition being higher than that of the original structure.

Planning Staff worked with the Applicant over the course of many months to get to a plan that allowed for the exterior of the historic Mansard to be retained and upgraded to appropriate historic proportions while allowing for a new addition to allow for additional residential units. (Planning Staff will oversee this process and will have strict requirements as to materials used and historic details replicated.)

The initial proposal put forth by the Applicant called for the existing building to be completely re-skinned, stories added and additions made such that the entirety of the structure would have looked like the now-proposed rear addition. The second iteration of this project included removing the original Mansard roof from the original structure and adding another story to the original structure topped by a new Mansard roof. This second iteration also called for rear additions to the buildings. Planning Staff was not supportive of either of these proposals for numerous reasons with the large increase in massing and obfuscation of the historic Mansard structure being two of the principal issues.

The proposal that the ZBA has before it on October 4th is the result of concerted negotiation between the Applicant and Planning Staff. Staff's requirements of the Applicant for this project included a rear addition that clearly read as being distinct in design, form, and materials from the original, historic structure. More specifically, Staff required the rear addition to be designed in such a way that the addition would appear to be a separate, larger building situated behind the historic Mansard, allowing the Mansard to clearly read as a separate building from the modern addition (as well as from the modern upgrade given to the unfortunate 20th century left façade addition). Additional criteria included that the Mansard structure retain its existing height, distinctive roof form, and architectural details current and to-be-uncovered. While this is not a restoration project, appropriate sensitivity will be given to the exterior of the existing historic structure under the guidance of the Planning & Preservation Staff member.

Staff has set conditions for this project that allow for Planning Staff to have review and approval of all materials, landscaping, etc. During this review, Planning Staff will be giving particular attention to the historic Mansard to ensure that details from muntin patterns to window fenestration, door selection, etc.

Rear setback

The rear yard setback is currently non-conforming at 1.0 foot. In the NB zone, in which this parcel is situated, the required setback is 10 feet plus two feet for each story above the ground floor. The Applicant proposes both lateral and vertical extensions of the rear yard non-conformity. Laterally, the Applicant proposes extending the rear yard setback toward the left rear corner of the lot. The 1.0 foot setback line will be held. Vertically, the Applicant proposes an addition totaling 4 stories in height. The 1.0 foot setback will largely be held with some inward punctuations to allow for outside/deck space.

The building abutting this parcel at the rear is 31 Union Square, the building currently housing WorkBar. As this abutting parcel is in the CCD55 zone rather than a residential zone (RA, RB, or RC), there is no requirement for further step-back from the rear property line of any additional stories.

Number of dwelling units

Existing conditions on the site present two residential units. The Applicant proposes increasing the number of dwelling units from two to four. This changes the lot area per dwelling unit ratio from 1 : 1,776 to 1 : 889. This is just over the minimum required lot area per dwelling unit ratio of 1 : 875 for a building containing 1 – 9 dwelling units in the NB zone.

FAR

The existing floor area ratio (FAR) is 1.17. With the reconfiguration of the interior along with the new addition, the Applicant proposes a new FAR of 2.0 (rounded from 1.98). Under this proposed project, the Applicant will have maxed-out their allowable FAR for this site, preventing any future creation of usable space under the current zoning ordinance.

Pervious Area

Currently, the portion of the property that is not covered by the existing building is covered by bituminous material (asphalt). The asphalt will be removed and, along the narrow walkway at the left elevation, pervious pavers will be installed. The pervious area percentage will be increased from 0% to 6% according to the proposal.

Landscaped Area

Minimal “landscaping” exists on the property currently. The Applicant proposes increasing the landscaping to 7% from roughly 1% through the greening of the narrow strip of land between the public sidewalk and the front façade of the existing Mansard house. The landscaping percentage will be further improved, as conditioned in this report, through the use of permanent planter boxes on upper levels of the new addition. This has been addressed through a condition at the end of this report.

Side and front yard setbacks

In the NB zone, there are no side yard setback requirements. The Applicant proposes maintaining all existing non-conforming left, right, and front yard setbacks at their current distance.

Parking

There is no portion of this parcel that is accessible for parking under current conditions; it is not possible to reach any portion of the lot for parking from any of the front, rear, or side elevations. Under current conditions, for the two residential units, each of which has 3 bedrooms, a total of 4 parking spaces are required. Under the proposed plan, the Applicant would be required to provide 6.5 parking spaces. As the funeral home use has expired, there is no parking calculation to be performed. Because it is unclear what the commercial use of the renovated commercial space will be, future parking relief will need to be obtained by any future occupants of that commercial space. This has been conditioned at the end of the report. For the residential units, 2.5 spaces of parking relief are needed.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1 & §7.11):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in the relevant sections of the SZO. This section of the report goes through those sections in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicants conforms to the requirements of §4.4.1, §8.5, §7.11, and Article 9 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: The Applicant must comply “with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit.”

Under SZO §4.4.1, §8.5, §7.11, and Article 9 of the SZO:



Section 4.4.1 states that “[l]awfully existing non-conforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing non-conforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

Rear yard setback

With reference to the description of the Applicant’s proposal above with regard to the rear yard setback in the project description section of this report, the Board finds that the lateral and vertical extensions of the non-conforming rear yard setback will not be substantially more detrimental to the site or neighborhood than extant conditions. The proposed increases in this setback will, indeed, change the visual effect of this property along the streetscape. The Board does not, however, find this impact to be negative. Rather, the Board finds that the upward extension of this setback, as-proposed, will allow the original Mansard building to stand out against the more modern stylistics of its new rear addition. The Board does not find that the extensions of this setback will negatively impact traffic volume or congestion, the municipal water supply or sewer capacity. Beyond the noise that is to be expected during the construction phase of a project, the Board does not anticipate that the proposed setback extensions would negatively affect noise, odors, or shading in the vicinity.

Number of dwelling units

§7.11 of the SZO is the use table governing the City’s zoning districts, including the number of dwelling units allowed per zone and whether increases in unit counts require zoning relief. The Board finds that the increase in the number of dwelling units from two to four will not negatively impact shading, odor, visual effects or the neighborhood character. This Union Square-area parcel is well-situated along public transportation routes and in an area where services and amenities are within an easily-walkable distance. Therefore, the Board finds that this increase in density will not have a negative impact on traffic congestion or patterns. Moreover, two additional dwelling units should not negatively impact the municipal water supply or sewerage services. The Applicant’s project team will be required by building code along to ensure that measures are taken to minimize water usage and outgoing sewerage levels.

FAR

The use table found in §8.5 of the SZO governs the dimensional requirements in each of the City’s zoning districts. §8.5 is used in conjunction with §4.4.1 of the SZO to determine whether zoning relief is needed for all parcel dimensionals. The project at 263 Washington Street calls for an increase in FAR such that the FAR will be virtually maxed-out under the current zoning ordinance (see project description section of this report above). In keeping with the findings under the “number of dwelling units” and “rear yard setback” assessments of this report, the Board finds that the increase in FAR will not be detrimental to the site or neighborhood for same/similar reasons.

Parking

As noted earlier in this report, the funeral home use for the commercial space on the property has expired, therefore no parking calculation is performed at this time. This approval recommendation has been conditioned such that any and all future occupants of the commercial space on this site shall be required to appear before the ZBA for special permits for their use, dimensionals, and parking, as-required by the proposal. At that future time, parking will need to be calculated based on use, square footage, and number of employees, etc.

As regards the residential units, currently the site presents two units with three bedrooms each. This translates to a current parking requirement of 4 spaces. No parking spaces are provided on the property as

there is no possible means of accessing any portion of the property alongside or behind the building for parking.

Under their new proposal, the Applicant proposes a total of 9 bedrooms which would require 6.5 parking spaces. The differential between the current parking requirement and the proposed parking requirement is 2.5 spaces. As with the existing conditions, the parcel has no means of providing any on-side parking. As the Board has noted earlier in this report, this area around Union Square is heavily serviced by public transportation and is within easy walking distance of numerous services and amenities. Despite the uptick in unit count, because of the parcel and neighborhood conditions noted, the Board does not find that providing 2.5 spaces worth of parking relief would cause undue traffic congestion or volume, add to the noise, visual appearance, water/sewer capacity, shading or scale. The Board recommends granting parking relief for the 2.5 spaces under §9.13 of the SZO.

3. Consistency with Purposes: *The Applicant has to ensure that the project “is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles.”*

The proposal, as conditioned, is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting the health, safety, and welfare of the inhabitants of the City of Somerville; to secure safety from fire, panic and other dangers; and to encourage the most appropriate use of land throughout the City.

4. Purpose of District: *The Applicant has to ensure that the project “is consistent with the intent of the specific zoning district as specified in Article 6”.*

The Board finds that the proposed project, as-conditioned, is consistent with the intent of the NB zoning district which is “...to establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods.”

5. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal will not add to the existing stock of the City’s affordable housing units.

6. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs.*

The Board finds that the proposed project complies with the purposes of SomerVision in it will add two living units to the City’s housing stock. The Board also finds that the changes proposed to the property will visually improve the parcel in question and will provide a visual upgrade to the neighborhood as well.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Elaine Severino, Danielle Evans, Josh Safdie, and Anne Brockelman with Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is to remove the funeral home use from the site, create new commercial space, increase the number of dwelling units from two to four, add a rear addition, horizontally and vertically extend the non-conforming rear yard setback, increase the FAR by more than 25%, upgrade existing facades, and for parking relief.	BP/CO	ISD/Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>April 6, 2017</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>September 25, 2017</td><td>Final plans submitted to OSPCD</td></tr></table>				Date (Stamp Date)	Submission	April 6, 2017	Initial application submitted to the City Clerk's Office	September 25, 2017	Final plans submitted to OSPCD
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	April 6, 2017				Initial application submitted to the City Clerk's Office					
September 25, 2017	Final plans submitted to OSPCD									
<u>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.</u>										
Pre-Construction & Construction Impacts										
2	The Applicant shall, at his expense, replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc.) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							
3	The Applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng./ISD							
4	Approval is subject to the Applicant's and/or successor's right, title and interest in the property.	Cont.	Plng./ISD	Deed submitted & application form signed						
5	All construction materials and equipment shall be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P							

6	<u>Construction shall occur from 7:30am – 5:00pm Monday-Friday ONLY. There shall be no construction or construction-related work allowed on the weekends or holidays.</u>	During Construction	ISD	
7	The Applicant shall ensure that all food waste associated with construction personnel be removed from the premises at the end of each work day.	During Construction	ISD	
8	The Applicant shall, throughout the construction process, ensure that the project site remains as follows: <ul style="list-style-type: none"> - <u>ALL</u> construction debris shall be placed in dumpsters or similar at the end of <u>EACH</u> day; - Items removed from the existing building as part of the project process shall be disposed of in dumpsters <u>at the end of each day</u> and/or placed in storage off the premises. These items may include, but are not limited to: mechanicals, pipes, vents, household appliances, toilets, bathtubs, refrigerators, etc. - <u>Under no circumstances</u> shall debris from demolition, construction waste, or the like fall upon, be placed upon or otherwise encroach on abutting properties or the public way. - <u>ALL</u> hazardous material including, but not limited to, asbestos (siding, pipe wrap, insulation, etc.), oil tanks, etc., shall be removed by a licensed, insured, and qualified specialist. 	Pre-Construction & during construction process	ISD/Plng	
9	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	ISD/Engineering	
10	The Applicant shall contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction. There is a moratorium on opening streets from November 1 st to April 1 st and there is a list of streets that have additional opening restrictions.	BP	ISD/Engineering	
11	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD	
Design				



12	The Applicant shall provide final material samples for siding, trim, windows, and doors, etc., to Planning Staff for review and approval prior to construction. There shall be no vinyl used on this property for siding, trim, doors or the like. There shall be no vinyl used on the exterior of this structure. Windows shall have muntins (grids) applied to the glass. No between-the-glass grids shall be allowed. Windows shall not be tinted nor shall they convey any reflective or mirrored quality.	BP	Plng/Zoning Review Planner	
13	All new rails (on decks/balconies) shall be vertical so as not to create a ladder effect. The deck over the commercial entrance noted on A1.4 shall be built as indicated on the plan sheet.			
14	All roof decks/balconies shall be pulled in one foot.			
Site				
15	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well-kept and in good and safe working order.	Perpetual	ISD	
16	The Applicant shall present a landscaping proposal for the front yard to Planning Staff for their review and approval. All landscaping materials screening materials and materials used for parking/driveway area shall first be reviewed and approved by Planning Staff prior to their installation and again prior to final sign-off.	BP/CO	Plng/ISD	
17	Garbage and recycling containers shall be stored out-of-view of the public way. All such containers and container areas shall be screened with either evergreen plantings (no arborvitae) or wood screening. Locations for containers shall be indicated on the final plan set submitted to ISD for building permits. Screening material shall be reviewed and approved by Planning Staff prior to installation.	Screening material: BP Installation of container site and screening: CO	Plng/ISD	
18	There is minimal open land for landscaping on this parcel. In addition to the front landscaping proposed by the Applicant, the landscaping percentage shall be further increase via the installation of permanent planting boxes on the upper floors of the rear addition. All proposals for planter boxes, including length, width, depth, location, irrigation plan, and plants installed therein, shall be reviewed and approved by Planning Staff prior to installation.	CO & Perpetual	Plng/ISD	
Miscellaneous				

19	Gas and electric meters shall not be located on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hard, staff-approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived Staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	Plng/ISD	
20	Electrical conduits on the exterior of buildings shall be painted to match the color of the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng/ISD	
21	There shall be no vents or exterior pipes located on the front of the building façade nor on any façade visible from the public way. All vents and exterior pipes shall be painted or wrapped to match the color of the structure from which they protrude.	CO	Plng/ISD	
22	Any and all future occupants of the commercial space in this building are required to appear before the ZBA for special permitting for the use, parking, and build-outs of the commercial space.	Perpetual	ISD/PLNG	
Public Safety				
23	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
24	All lighting shall be downcast and shall not spill onto the public way or onto neighboring properties in any fashion.	CO	ISD	
25	Per Somerville Ordinances, no grills, barbeques, chimineas or similar shall be allowed on any porches, decks, balconies or the like. These restrictions shall be written into any condo docs and/or rental agreements, proof of which shall be shown to the City prior to the issuance of a Certificate of Occupancy.	CO/Perpetual	FP/ISD	
Final Sign-Off				
26	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Elaine Severino
Josh Safdie
Danielle Evans

Attest, by the case City Planner: _____

Alexander C. Mello

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

